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Governor

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David B. Struhs
Secretary

August 19, 2002

Ken Ammon, Director
Water Supply Department
South Florida Water Management District
P.O. Box 24680
West Palm Beach, FL 33416-4680

Dear Ken:

We appreciate the opportunity to review the June 25, 2002 draft "Reservations of Water for the Environment and Assurances for Existing Legal Sources Consistent with State and Federal Law." The document is a sound foundation for the process the District will use to meet the state and federal requirements related to implementing CERP. Establishing reservations on the scale proposed in CERP represents a daunting task, but the District is to be commended for the approach outlined in the draft document. There are many uncertainties associated with this effort, but the document provides enough flexibility to allow for changes as the District begins to actually implement the procedures. We do have some recommendations for improvement.

Relationship between Reservation and Drought Level

The document should make it clear that the water reserved for the natural system will be protected during water shortages (except in extreme circumstances). At present, Figures 1 and 2 can be interpreted to mean that reservations will not be protected during drought conditions more severe than a 1-in-10 drought event. The current version of Figure 1 shows that the natural system receives no additional benefit from a reservation of water beyond a 1-in-10 year drought event, until the year 2050, when all of CERP projects are implemented. This portion of the graph should be modified to show some incremental benefit to the natural systems during drought events as CERP projects are implemented. After all, it is during the droughts that it is most critical to "get the water right" to the natural systems.

We recognize that Figures 1 and 2 are conceptual, not quantitative. Nonetheless, in Figure 1, it appears that perhaps the Environmental Demand curve is too steep in the drought region when compared to the Human Supply Curve. Therefore, the graph makes it appear as though the natural system suffers more "adversity" than is experienced in public supply. We suggest revising the slope of the environmental demand curve so that it does not decline so steeply. It

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would also seem that the human supply curves should begin to decline as a result of Phase 3 restrictions being implemented. Additionally, Figure 1 could benefit from some explanatory text within the main document.

In Figure 2, it appears that reservations terminate during conditions more severe than a 1-in-10 year drought event. We suggest revising this figure so that it shows that reservations will be implemented during all hydrological conditions.

Quantifying Existing Legal Sources

The document should make a very careful distinction between 1) protecting the amount of water that existing users derive from a source and 2) the entire volume of water in a source. It is appropriate for the District to quantify the amount of water used by or permitted to existing legal users for a specific source. However, it is not appropriate to quantify the entire volume of water that could be available to users from an existing legal source and then designate that entire volume of water as the existing legal source, which must be protected by CERP. From the information presented on pp. 15-19, we are not sure if the District is proposing to protect only the volume of water in existing use (or permits) or whether the district is proposing to protect the entire volume that potentially could be used. Therefore, we recommend that the District explicitly indicate that the amount of water identified as an existing legal source will not be the entire volume of the source basin, but the volume used by (or permitted to) the existing users as of December 2000.

We also recommend that the document discuss policies affecting any increased allocations that have occurred after December 2000. Has the district increased the amount of water allocated to the different users since December 2000? If allocations have increased since then, do these users have the same assurances provided in WRDA? What happens to the allocations that have increased from December 2000 until a new source comes on-line? Will these increases be included in the determination of whether the project is operating according to design specifications? Does the new source have to meet these increased allocations, before users can be switched to it?

Natural Systems

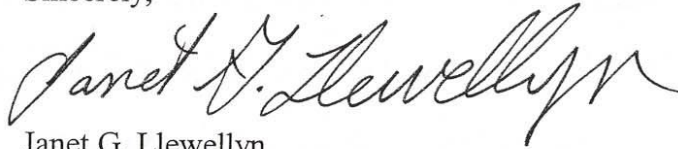
We have some concerns about the definition for "natural systems." As proposed in the draft paper, "natural systems" are limited only to those areas in public (state or federal) ownership. Although this is the proposed definition also used in the programmatic regulations, our concern is that this definition may be too limited. It could prevent the District from establishing a reservation for a significant natural resource that may not be in public ownership. We urge the District to carefully consider the implications of using such a restricted definition for "natural systems." What would happen if it were discovered during project design that the hydrology of a non-publicly owned natural feature needs to be protected or enhanced by a project?

Documenting the Baseline

As the draft notes, it is critical that the District carefully document all the assumptions and methodologies used to develop the baseline condition. Careful documentation of this effort will be a valuable tool for the adaptive management that will be needed as the CERP projects are completed many years from now. This paper could describe in greater detail just how it is proposed to define and keep a permanent and accessible record of the baseline condition.

Additional specific editorial comments are attached. Please continue to keep us informed of the District's progress toward implementing the concepts outlined in the draft paper. If you have any questions, please contact Kathleen Greenwood or me at (850) 488-0784.

Sincerely,



Janet G. Llewellyn

Deputy Director

Division of Water Resource Management

JGL/kpg

Attachment

cc: Ernie Barnett, DEP
Melissa Meeker, DEP, SED
Rick Cantrell, DEP, SFD
Tom Swihart, DEP
John Outland, DEP
Jose Calas, DEP, SED
Kathleen P. Greenwood, DEP
Greg Knecht, DEP
Debbie Scerno, DEP
Mellini Sloan, DEP
Sherry Scott, SFWMD

Specific Comments

Page 9, line 16. Incorrect reference to MFL adoption date, the District adopted MFLs in 2001 not 2000.

Page 10, line 35. Sentence does not make sense as written. It appears that the word "rule" should be replaced with "use."

Page 13, line 45; Page 15, line 30; Page 42, line 15. Add "pre-CERP baseline" before "surface storage". This will clarify that any additional surface storage constructed under CERP will be counted as new water and subject to reservations for the natural systems.

Page 17, line 13. Please provide a specific definition for regulatory discharges. This will affect the amount of water later perceived to have been created (new water) by CERP components.

Page 17, line 35. Should the word "source" be substituted for "project?"

Page 17, line 46. The word "have" should be deleted

Page 18, line 28. Item 4 includes the new term "existing legal source user basin." This appears to be a conglomeration of many terms previously described separately. If this is the correct term, please provide a definition.

Page 19, lines 7-9. The description of non-consumptive uses appears somewhat restrictive since it only refers to resource protection. Please consider adding ecosystem restoration to the sentence as follows: "...water available for non-consumptive uses for resource protection and ecosystem restoration."

Page 19, lines 17-19, and lines 31 - 33. At this point, it would be helpful to also note that any sources that may become available through time can only become available after the "sufficient reservations of water for the restoration are made under State law..." (see page 5, lines 40-44)

Page 20, lines 40-42. This sentence appears to imply that the permit applicant is the entity responsible for protecting water resource, which is beyond an individual applicants responsibility. Perhaps the sentence should be reworded "The SFWMD will ensure that non-consumptive uses of regional water are protected through specific conditions (such as salt-water intrusion prevention, isolated wetland protection, water conservation requirements etc) placed in consumptive use permits."

Page 21, Section D, and Page 23, Section E. These two sections form the main conclusions of the document and describe what will be involved in the final determination of "reservations for the natural system." The concepts presented here did not make sense until one reads Appendix D. Please consider adding some more of the information from Appendix D in these two sections.

Page 21, line 44. At the beginning of this section, it would be appropriate to reiterate the earlier discussion (page 5 lines 40-44) noting that any sources that may become available through time can only become available after the "sufficient reservations of water for the restoration are made under State law..."

Page 24, line 32. This section should include some explanation of the "next added increment." This is the first reference to the concept, and the reader is told it will be optimized.

Page 25, Table. Under Detailed Design, the Stage of Quantification of Water column should be "Refine Quantity to be reserved (if required)".

Figure 5, text underneath chart. The parenthetical text below "project reservations" does not make sense. Perhaps the text should read "may have separate system-wide reservations?"

Page 33, line 12. Replace "lined" with "legal."

Page 34, lines 13-17: This definition of "reservation of water for natural system" is accurate in referencing the provisions in section 373.223, F.S., (not 373.232) allowing for reservations protect fish and wildlife, but incomplete. The statute also allows reservations for the public health and safety.

Page 34, lines 22-27. "System-wide reservation account" is not used anywhere in the document and should be deleted from the definitions section.

Page 47, Appendix D, line 21. Delete the reference to consistency with the LEC Water Supply Plan. Although excess new water from a project may be allocated for consumptive use water supply, it should not be a requirement under CERP.

Page 48, lines 27-31. This list introduces the term "volume duration curve" yet the rest of the document refers to "volume probability curves." Please make the appropriate changes to use consistent terminology.